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ABSTRACT

Use of communication theory in an analysis of the court proceedings of the Jean Harris murder trial suggests that Harris contributed to her conviction with her inconsistent use of language and her refusal to remain in low-profile. Harris' defense attorney attempted to portray her as an upstanding, well-bred member of the community, and as a powerless, unwilling part of a love triangle. To increase her credibility, the defense showed Harris to be a user of "high," or formal, public language. She was also portrayed as helpless and devastated when testifying in her defense, and frequently cried while speaking. The prosecution, however, demonstrated Harris' jealousy and propensity for murder in a letter written to Herman Tarnower, the victim, in which she used "low" or impolite, vulgar language, and in satirical poems she had written. Moreover, Harris damaged her credibility by offering too much information on the witness stand; by using direct, confrontational language when speaking to the prosecutor; by taking notes and making suggestions during the trial; and by offering direct objections to the judge. Analysis of Harris' trial suggests that attorneys should remind witnesses to avoid inconsistent language and maintain a subordinate role in the courtroom rather than try to upstage or overpower the prosecution. (Eighteen references are included.) (JC)

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THE SEMANTICS OF CROSS EXAMINATION: A CASE STUDY OF THE JEAN HARRIS TRIAL

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The Semantics of Cross-Examination: A Case Study of the Jean Harris Trial

The murder trial of Jean Harris opened on November 5, 1980, in Westchester County Court. George Bolen led the prosecution for the State of New York. Joel Aurnou served as the chief defense attorney for Jean Harris. After fourteen weeks of trial testimony from 91 witnesses, the jurors returned a verdict on February 28, 1981, of guilty of second-degree murder. Judge Russell R. Leggett, who adhered to the standards of the minimum mandatory sentencing laws of New York, sentenced Harris to fifteen years without parole. At the present time, Harris is serving her term in the Bedford Hills Correctional Facility, a maximum security prison for women.

Besides the importance of the trial for the study of cross-examination, the proceedings hold great interest as a public event. The trial of Jean Harris is noteworthy for several reasons. First, the case was one of the most sensational of this decade. The media gave particular attention to the case because of the social class of the defendant and the victim. Jean Harris, the accused, served as Head Mistress of the Madiera School, a private institution for socially advantaged girls. Herman Tarnower, the victim, worked as an internist and cardiologist in Scarsdale, New York. Prior to his death, he had achieved public prominence for his best-selling book, The Scarsdale Diet.

A second noteworthy feature of the trial is that Harris took an active role in her own defense. She told Aurnou that he was not to defame Tarnower in any way, and she also refused to let her attorney plead guilty by reason of insanity (Harris, 1986). During the trial, she took notes, offered advice, met with the press, argued with the prosecutor, and interrupted the judge. A trial observer, Trilling (1981) noted: Harris "acts as if she were Aurnou's prize legal assistant. She not only takes notes but also reaches into the defense files on their table for papers or photographs as she thinks her counsel should have them" (p. 117).

The focus of this paper, however, is analyzing the in-court proceedings by applying communication theory. A striking quality of the trial is its mixture of complex semantic choices in the form and content, high and "low language", and powerful and powerless speech. Although the defense tried to portray Harris as a lady who was morally upright and socially well-bred, the evidence showed her to be jealous, vindictive, and morally inconsistent. The prosecution also had a difficult task establishing Tarnower as an innocent victim because the evidence showed that he was mean, arrogant, and lacked compassion for those whom he purported to like the most.

A further reason for analyzing this trial is as a study of interrogation since the cross-examination of Harris marked a turning point in which the weight of the evidence changed to favor the prosecution rather than the defense. Harris' own testimony severely damaged the defense case. Her own words and demeanor showed that she was capable of murder, because of her anger toward Tarnower and her jealousy of Lynne Tryforos, the doctor's mistress at the time of the shooting. Moreover, the evidence of the trial,

particularly the Scarsdale letter, demonstrated that Harris was not the lady she was portrayed to be by her own attorney, the media, and her character witnesses.

My goal is to analyze the semantics of cross-examination using the Jean Harris trial as a case study. To achieve this goal, the essay (1) describes the semantic choices adopted by the attorneys during cross-examination, (2) analyzes the responses of Harris and other witnesses during interrogation, and (3) offers explanations of the effect of semantic choices on the outcome of the trial.

Semantic Choices of Attorneys

The words of the courtroom are the data upon which jurors make their decisions. Jurors cannot give equal credibility to what each attorney and each witness says. Instead, the law requires jurors to decide who is to be believed and who is not. The rules of judicial and criminal procedure permit jurors to rely on demeanor evidence; that is, they can decide the credibility of witnesses from their style, paralinguistic cues, and nonverbal behavior (O'Barr, 1982).

In cross-examination, just as is in other parts of the trial, words are important to the interrogator and to the witnesses. Cross-examination is part of the story-creation that occurs in a trial. To develop and create the story, attorneys carefully choose the words of their questions, and witnesses select the language of their responses. Cross-examination features opposing counsel interrogating witnesses in an attempt to get the witnesses to use their own words against them, to deny that some of the testimony represents reality or truth, and to show inconsistencies between the words of one witness and those of another.

Condon (1985) defines semantics as the study of meaning. One who analyzes semantics investigates the relationships between words and their uses and effects. Specifically, this section of the essay explains the meaning of the story of the Harris case and suggests how counsel's cross-examination strategies contributed to that meaning through naming and attitudinizing.

Stories and Cross-Examination

Bennett and Feldman (1981) conceive of communication in a trial as a process of storytelling. They explain that "through the use of broadly shared techniques of telling and interpreting stories, the participants in the trial present, organize, and analyze the evidence that bears on the alleged illegal activity" (p. 4). The logic of the story and the credibility of the storytellers are the information jurors use to decide the guilt or innocence of the accused.

Story has several defining traits. According to Chatman (1978), one trait is content, that is, the chain of events or actions. The events and actions presented in courtroom stories are the facts of the case, and these facts verify the charges of the indictment. Another trait consists of existents, the characters and setting of the story. In stories relating to the trial, the existents include the people and places associated with the alleged criminal actions. To develop their stories, advocates seek information about the times, places, people, motives, and relationships that pertain to the facts of the case. The final trait is the discourse, the linguistic means by which the content

and the existents are presented by the witnesses who tell the story. The discourse includes descriptions of people, places, objects of evidence; claims of fact and the inferences and evidence presented in support of those claims; and refutation and rebuttal of of the divergent stories given by witnesses.

The opening statements of the prosecution and defense revealed two very different stories of how the death of Herman Tarnower occurred on the night of May 10, 1980. Both versions offered similar accounts of the characters and setting, but the narratives differed significantly in their explanations of the events and actions. This paraphrase of the two stories indicates the conflicting purposes of the prosecution and the defense.

The prosecutor's story chronicled the crime in this way. Herman Tarnower had gone to bed at 8:30 p.m. after a dinner with his niece and Lynne Tryforos. Jean Harris entered Tarnower's bedroom from a stairway ascending from the garage. She carried a .32 caliber gun, licensed in Virginia but not New York, and ten rounds of ammunition. She fired five shots hitting Tarnower in the front right shoulder, the upper right arm, the upper right back, and the hand. The shots severed a vein and punctured the lungs and kidneys of the victim. After the shooting, Tarnower rang the buzzer in his room to get help from his servants downstairs. The servants heard the buzzer, as well as sounds indicating yelling and fighting between Tarnower and Harris. They called the police. After the shooting, Harris left the house. While she was driving away from the scene of the crime, she spotted a police car and followed the car back to Tarnower's home. At the scene, the police attempted to resuscitate Tarnower, but the victim was pronounced dead upon arrival at the local hospital.

The defense presented a very different version of the crime, explaining the shooting as a tragic accident. On March 10, the day of the shooting, Harris suffered extreme fatigue and depression and intended to take her own life. She had completed all the paperwork to take care of her possessions after her suicide. Early in the day, she had notified Tarnower that she wanted to see him. She drove five hours from Virginia to New York during a bad storm. She arrived at 11 p.m. and entered Tarnower's room when he was sleeping. She wanted to talk to him one last time before her suicide. He was unreceptive to her words, so she pulled a gun from her purse and pointed it at her head. At this point, Tarnower tried to get the gun away from Harris, and the gun went off several times. After the shooting, both Tarnower and Harris rang the buzzer to summon the servants. When they did not arrive, Harris quickly left the house to get help. On her way, she spotted a police car and followed it back to Tarnower's home. When Harris returned to Tarnower's house, she was emotionally distraught over the incident.

Both sides of the case elaborated their story through the testimony of direct examination and refuted it through the words of the cross-examination of opposing counsel's witnesses.

Naming and Attitudinizing

The words of the cross-examiner are attempts to get the witnesses to affirm and deny the respective stories of the case. Concepts borrowed from Kenneth Burke provide insight about how

attorneys construe meaning through the interrogation process of the trial. Burke (1973) suggests dual functions of language--naming and attitudinizing.

The naming function occurs when language is used to describe reality, such as identifying the characteristics of persons and things and establishing the categories to which people and things belong (Burke, 1973). In the story development of a trial, the attorneys establish the existents of the trial story; that is, they name characters and delineate the pertinent characteristics of a setting--space, time, and objects. Naming has a broad function in a trial. Advocates ask questions so that witnesses can recreate events and tell the story of the case. Naming is an especially crucial part of the testimony because the attorneys and witnesses jointly create the facts of the case as they pertain to the characters, actions, and setting. Establishing the "issues of fact" is essential to telling the story of the crime. An issue of fact is a legal name for the data presented at a trial that proves the charges of indictments. Jurors must base their verdict on these issues.

Attitudinizing, according to Burke (1973), has a more central function in the process of meaning-creation than naming. Attitudinizing means that the choices of words give clues to receivers about the values and judgments of language users. Attitudinizing serves a poetic function; that is, the language expresses emotional factors, shows contradictions and inconsistencies, and plays one set of attitudes against the other. Thus, the attitudinal function of language reveals the values, motives, and preferences of language users. In trial discourse, the attorneys try to get witnesses to name the existents--characters and setting. But attorneys also try to elicit from witnesses their attitudes toward people and events that are part of the alleged crime. Through language, attorneys and witnesses who tell the story of the crime affirm some values and deny others, make inferences about causality, and give clues about their own motives and biases. Because language projects attitudes and simultaneously names, jurors are able to interpret and evaluate the issues of fact rather than just restate the facts they have heard presented.

In their interrogation of witnesses, attorneys both name and reveal attitudes. Tanford (1983) links successful examination to two goals: it elicits testimony favorable to one's own theory of the case, and it discredits the credibility of the witnesses of the opposition. In the Harris trial, both Bolen and Aurnou demonstrated skill as interrogators in getting their witnesses to name events and facts and to convey attitudes about the events associated with the crime.

Eliciting favorable testimony often depends upon the way attorneys word their questions. Mauet (1980) recommends two strategies. First, ask leading questions--questions that suggest the answer wanted from the witness. Leading questions ask the witness to name people, events, or things that are presented as evidence. For example, Bolen asked Harris the following question: "You left Dr. Tarnower's home before the police arrived, is that correct?" Leading questions may also seek verification of attitudes. For example, Bolen asked Harris: "You left the house

even though you knew Dr. Tarnower was dying, didn't you?"

A second way of eliciting favorable testimony is to state a fact and then ask the witness to agree. This type of inquiry can achieve the semantic function of naming, such as "Mrs. Harris, you knew that Lynne Tryforos was spending time with Dr. Tarnower, didn't you?" Questions of this type can also emphasize attitudes, such as "Mrs. Harris, you called Mrs. Tryforos 'a whore,' didn't you?" The following segment illustrated how the attorneys in the Harris case elicited favorable testimony through leading questions that stated facts seeking agreement:.

Bolen: Mrs. Harris, isn't it a fact that Dr. Tarnower had told you he preferred Lynne Tryforos over you?

Harris: No, he didn't.

B: Mrs. Harris, isn't it a fact that during that March 10, 1980 morning phone conversation with Dr. Tarnower he told you that you had lied?

H: No. He was angry. . . I think with himself. . . .

B: Mrs. Harris, isn't it a fact that during that March 10, 1980, in a morning telephone conversation with the doctor he told you that you cheated? Yes or no.

H: No, indeed (TR, Vol. 125, pp. 2-4).

In this segment Bolen tried to get Harris to name an action but simultaneously got her to reveal her attitudes toward Tarnower. Questions of this type attempted to get the witness to give testimony that favored the opposition's story.

Attorneys also try to discredit witnesses in several ways (Mauet 1989; Tanford, 1983). The first strategy is to show that the perceptions of witnesses are faulty by asking them to name specific times, distances, locations, or action sequences. After the witness names these factors, then the attorney shows that the witnesses conclusions are inaccurate, or they do not fit with common sense or with other testimony.

Bolen tried to show that Harris was inconsistent when she concluded that Tarnower was not wearing glasses on the night of the crime. He did this by getting the defendant to admit Tarnower always wore glasses.

B: Were there occasions when the two of you were together when you really weren't doing that much, just being with one another when he wore glasses then?

H: Sometimes, sure. . . .

B: Did you now whether the glasses that he wore were prescription glasses or not?

H: I honestly don't know. . . .

B: . . . You distinctly recall the fact that the doctor did not wear glasses when he played golf. Do you remember saying that?

H: Yes. . . .

Bolen then introduced a series of photographs of Tarnower on the golf course wearing glasses and discredited Harris' assertions that he often did not wear glasses..

B: Would you say each of those pictures fairly and accurately show Dr. Tarnower, or as you knew him.

H: Yes. . . .

B. Is he wearing glasses in each of those (pictures)?

H. Yes (TR, Vol. 118, pp. 45-48).

A second strategy for discrediting the witness is to demonstrate the error, prejudice, or attitudes that make the witness not credible. This strategy is an attempt on the part of attorneys to elicit words that express the prejudicial attitudes of the witness. Aurnou's cross-examination of Sergeant Carney, an officer who interrogated Harris on the night of the crime, illustrated this strategy:

> A: Did you give them (the Fairfax police) any information regarding the subject of premeditation?
> C: Well, I believe, that is I recall, information was given to me alleging the possibility of the crime committed may have been premeditated.
> A: Is that what you told Virginia authorities?
> C: I told them there had been a . . . I believe there had been . . . I believe I told them there had been a shooting and the victim expired.
> A: Did you tell them a shooting or a murder?
> C: Possibly a murder?
> A: And that was a kind of rush to judgment on your part, was it not?
> C: Yes (TR, Vol. 80, p. 50).

A third strategy is to demonstrate that the witness has made prior inconsistent statements, either in naming or attitudinizing. To show inconsistency, attorneys directly confront the witness with pretrial statements or written records that differ significantly from their current testimony. In the following excerpt, Bolen discredited Harris:

> B: Mrs. Harris, did Dr. Tarnower ever threaten you with banishment?
> H: I think if I had given him a hard time about things, yes. He wanted fun and games and happiness, and . . . if you talked about things that were troubling, he didn't want to hear about it.
> B: Mrs. Harris did you ever consider yourself publicly humiliated by the fact that the doctor was seeing Lynne Tryforos?
> H: I thought he was publicly humiliated much more than I (TR, Vol. 121, p. 40).

Bolen followed this sequence of questions with the reading of the Scarsdale letter in which Harris wrote that she was publicly humiliated by Tryforos' presence in Tarnower's life and that she harbored extreme contempt for Tryforos, statements that were inconsistent with Harris' previous testimony.

The strategies for wording questions by attorneys are frequently referred to in the literature about trial advocacy as rules for interrogation. However, these sources fail to explain the effects of the questions on the witness or how the questions lead to answers that affirm or deny the facts of the case. Quite clearly, questioners should not just follow the rules but should recognize the impact of these rules on those who tell and those who listen to the story of the case.

Semantic Choices of Witnesses

Even though many scholarly sources stress the importance of the words that attorneys should use, very little research exists about the semantic choices of witnesses, particularly of the defendants. Despite this fact, the words of witnesses elaborate the story of the trial through narratives that give clues about their motives and credibility. O'Barr (1982) notes that "what makes the court especially interesting is that language strategy is recognized by participants, although poorly understood by them" (p. 2). This conclusion suggests that witnesses know that the language they choose affects jurors, but they are unaware of what effects those semantic choices are likely to have.

The words of Jean Harris presented a striking illustration of the complex effects of the choice of her words and demeanor upon the meaning and credibility of the story offered by her attorneys. The semantic choices were especially evident in the form and content, high and "low language", and powerful and powerless speech.

Form and Content

The form and content of the words often affect the meaning of witnesses' responses. In some cases, the form is latent because the content is so compelling. In other cases, the form overshadows the content.

Form refers to the connective structure of ideas, including statements of fact, processes of inference, and the causal patterns of the discourse. To some extent, attorneys can help to frame responses by the form of the questions they ask. By carefully wording questions, attorneys can limit what witnesses are allowed to say according to the rules of the court. For example, Bolen questioned Harris about a letter she had sent to Tarnower, using questions that required "yes" or "no" responses:

B: Was the following letter sent to Dr. Tarnower?
H: That's right.
B: And you placed it in an envelope which you addressed yourself? Is that correct?
H: Yes (TR, Vol. 121, p. 25).

The questioner cannot change the form of the evidence because the evidence exists apart from the question. In the Harris case, the form of the evidence was particularly striking because it consisted of suicide notes, satirical poems, and threatening letters. In each case, the original document was written for a private audience who understood the private meaning within the discourse. However, the document ended up as evidence in a public trial, a situation in which the jurors were expected to understand the words without knowledge of the sender or the context in which the message was conceived.

One example of the complex form of the evidence was introduced by Aurnou during his direct examination of Harris. This piece of evidence was referred to as "the Christmas Poem," a satire of "'Twas the Night Before Christmas," written by Harris and given to Tarnower and common friends, the Schultz', on Christmas eve of 1979, four months prior to the death of the doctor.

This excerpt is an illustration of the form of language:

'Twas the night before Christmas,
When in part of the house

Arthur was snuggling
With Vivian, his spouse.
In the guest room lay Herman, who, trying to sleep,
Was counting the broads in his life--'stead of sheep
On Hilda, on Sigrid, on Jinx, on Raquel,
Brunhilda, Veronica, Gretel, Michelle;
Now Tania, Rapunzel, Electra, Adele;
There were ingenues, Dashers, Dancers, and Vixens, . . .
He lay there remembering, with a smile broad and deep
Till he ran out of names, and he fell asleep. . .(TR, Vol. 114, pp. 139-144).

When this satire was read, the judge smiled and Harris listened in apparent pleasure at hearing her clever words (Trilling, 1981). The form of the poem was dominant as a discursive structure containing clever and biting content. Because jurors were familiar with the original poem, they likely remembered the content, which poked fun at Tarnower's proclivity for womanizing.

In other cases, the content was more important than the form. The content of cross-examination evolves from the attorney's goal of getting the witness to affirm or deny facts that pertain to the criminal indictments. The content of cross-examination is limited to the scope of direct examination and the credibility of the witness (Federal Rules of Evidence 611, b). However, when opposing counsel examines a defendant, he or she often chooses words that suggest motive, opportunity, or intent.

In order to convict Harris, Bolen had to demonstrate to the jurors that the accused intended to kill Tarnower. The final questions of this interrogation of Harris pointed to intent:

B: Mrs. Harris, isn't it a fact that during that March 10, 1980, morning telephone conversation with Dr. Tarnower he told you that you were going to inherit $240,000? . . .

H: No, he didn't, Mr. Bolen. . . .

B: Is it is fact, Mrs. Harris, on March 10, 1980, you intended to kill Dr. Tarnower and then kill yourself because if you couldn't have Dr. Tarnower no one would? Yes or no, Mrs. Harris.

H: No, Mr. Bolen (TR, Vol. 125, pp. 4-5).

In some instances the form carries the meaning and in other cases the meaning is carried by the content. In the first illustration the form led jurors to the conclusions that Tarnower dreamed about many women on Christmas eve even though his mistress Harris was lying beside him. In the second illustration, even though Harris did not acknowledge intent, the content of the Bolen's questions named the motive and thereby implied that she had attitudes of revenge and jealousy, showing her capable of murder. Form and content are not the only registers of meaning in the trial, because clues from language-users about their culture also affect how jurors perceive the credibility of witnesses.

<u>High and Low language</u>

Ferguson (1959) differentiates between high and low language. "High language" is used for the public activities of a culture. The word stocks relate to public contexts--political, legal, and religious. Moreover, the emphasis of words is upon explicitness and

clarity; that is, they name and categorize people and events. The "high language" of a culture is codified in dictionaries and preserved in literature. Audiences expect to hear "high language" in the contexts where public business is being performed.

In contrast, Ferguson identifies "low language" as the words and narratives that appear in everyday vernacular and the private communicative exchanges within a culture. The word stocks include privately conceived meanings, slogans, and terms that express attitudes and make evaluations. Since "low language" is meant for particular audiences, its words are often laden with meanings likely to be understood by the participants within that setting and culture and unlikely to be understood by a wider public outside of this sphere of meaning. Often the word stocks of "low language" are perceived as too crude, impolite, or judgmental for public expression.

Quite clearly, individuals shift back and forth between their uses of the precise "high language" and the vernacular of "low language." But persons of high social status and credibility are expected to use the language appropriate for the context where they are speaking. Bolinger (1980) concludes that people who use "low language" in a public context are judged negatively and inferred by observers to be of low social status and credibility. This distinction relates directly to the language used by witnesses in the courtroom. Wodak-Engel (1984) concludes that the testimony of witnesses who use "low language" is judged to be less competent than that of those who use "high language."

Harris' testimony offered striking contrasts because she used both high and "low language" in an inconsistent way before the courtroom audience. During both direct and cross-examination, Harris used culturally acceptable public language, featuring naming and categorizing. In court, Harris chose the precise vocabulary and word stocks characteristic of the "high language," but the evidence showed that she used the crude vernacular and private meanings associated with "low language" in her interactions with Tarnower.

In the following excerpt Harris tried to retain the standards of "high language"; however, Bolen's interrogation forced her to admit her use of "low language."

> B: Did you use the words "your psychotic whore"?
> H: I might have. That's what Suzanne [Tarnower's house servant] always referred to her as. . . . Suzanne always thought she was crazy. She didn't use the word "whore" (TR, Vol. 121, pp. 78-79).

After referring to her crude word choices in the Scarsdale letter, Bolen gained the judge's permission to read the entire letter to the court. The following excerpts illustrate how "low language" mixed with high in this message:

> I am distraught as I write this--your phone call to tell me you preferred the company of a vicious, adulterous psychotic was topped by a call from the Dean of Students ten minutes later and has kept me awake for thirty-one hours. . . . I have to do something besides shriek with pain. . . . I have watched you grow rich in the years we have been together and I have watched me go through moments when I was almost destitute. . . . And now almost ten years later, now that a thieving slut has the

run of your home you accuse me of stealing. . . . Twice I have taken money from your wallet--each time to pay for sick damage done to my property by your psychotic whore. . . . She took a brand new nightgown that I paid $40 for and covered it with bright orange stains. You paid to replace it. . . . The second thing you paid for . . . was a yellow silk dress. . . . Unfortunately, I forgot to pack it because it was new and still in a box in the downstairs closet. When I returned it was still in the box rolled up, not folded now, and smeared vile with feces. I told you once it was something 'brown and sticky.' It was, quite simply, Herman Tarnower, human shit" (TR, Vol. 122, pp. 7-22).

This partial excerpt illustrates how the letter mixed naming and categorizing, qualities of "high language," with the private and impolite words and attitudes associated with "low language." The lists below further identify the names and attitudes used by Harris to categorize herself, Lynne Tryforos, and Tarnower in this letter.

Figure 1

Harris	Tryforos	Tarnower
sleepless, shrieking with pain, masochistic, destitute desperate, old, discarded garbage, pathetic, discarded trash.	vicious, adulteress, psychotic, fawning, psychotic whore, self-serving, slut, clever and devious, adulterous, thief vomitous, dishonest, ignorant.	rich, libelous, cruel, tasteless, breaks promises, marvelous snob, dignified.

Harris named and presented attitudes about herself and Tarnower in "high language" and often described Tryforos in the terms of impolite and private "low language." Burke (1969) explains that meaning is the result of tensions between terms that come from the way in which terms interact with one another. When jurors contrasted Harris' descriptions of herself and Tarnower with her names for Tryforos, they must have noticed that Harris relegated Tryforos to a position of low status but elevated herself and Tarnower to a high status.

It is not at all surprising that the letter irreparably harmed the credibility of the defendant. Jurors were unlikely to believe most of the defense's testimony that characterized Harris as an upper-class and refined lady with high integrity. Instead, the Scarsdale letter showed she was jealous, angry, vindictive, and vulgar. Her words revealed that she felt victimized by Tryforos and Tarnower, and that she abhorred her role in the love triangle.

Powerful and Powerless Speech

In addition to the form and content, and the high and low qualities of language, power is a third attribute that contributes to the meaning of the semantic choices of witnesses during cross-examination. Perceptions about witnesses' power derive primarily from the way their words and demeanor convey attitudes.

Borisoff and Merrill (1985) describe stereotypes associated with women's powerless and men's powerful language. They conclude that women are generally perceived to be "soft-spoken, self-effacing, compliant, and emotional" (p. 9). In contrast, men are perceived to be "direct, confrontive, forceful, and logical" (p. 13). O'Barr found that these qualities accurately characterized witnesses who were men and women. However, his research also discovered an exception--women of high social status, who were well-educated and active professionals, used language resembling that of men.

In this trial, Jean Harris' words and demeanor painted a contradictory portrait of herself. At times she used powerless, and at other points she used powerful language. A media observer at the trial recognized the contradictory uses of language by Harris. For example, Wadler (1981, February 25) offered this perception of Harris: She is

> a weary, middle-aged woman facing a young prosecutor--sympathy was on her side. . . . But under questioning from the prosecutor, Harris lost a lot of sympathy . . . She was self-righteous, condescending, nasty. . . . Her attorney could not control her--she talked more than any defendant should on the stand" (p. A10).

As a contrast, the phrases and sentences listed below illustrated how Harris' words about herself on direct examination presented a portrait of powerlessness. These words showed her to be self-effacing.

- "I had one great fear, that was exhaustion."
- "I was controversial as Head Mistress at Madiera."
- "Tarnower failed to 'give me sufficient recognition' for my contributions to his best-selling book.
- "I was frightened about my job."
- "I worried about money to support the children."
- "I was terrified about my own inadequacies."
- "I was a person sitting in an empty chair."

Not only did Harris encode her self-deprecating remarks in words but also in demeanor. During direct examination, she sobbed, fidgeted, refused eye contact, and presented herself as emotional and dependent. Trilling (1981) describes the demeanor of the witness when Aurnou questioned her about her planned suicide:

> The witness sits with her head down. Aurnou (softly): 'Jean look at me.' Mrs. Harris raises her head and looks at the ceiling. She speaks in a shaky voice: 'I don't know. I think it had to do with being a woman who had worked a long time . . . . I wasn't sure who I was, and it didn't seem to matter.' Aurnou: 'It mattered to you, didn't it?' Harris: 'I was a person sitting in an empty chair, Joel. I can't describe it more.' She starts to sob; Aurnou takes out his handkerchief and dabs his eyes (p. 225).

Quite clearly, the tack used by Aurnou on direct examination was to get Harris to describe herself in a self-deprecating way, showing that she was a victim rather than a strong, independent professional woman. Aurnou wanted the jurors to perceive his client as powerless because this was how he had described Harris' character in his version of the story of the crime in opening statement.

The self-effacing words and demeanor presented in direct examination, however, were contradicted during the five days of Bolen's cross-examination of Harris. During this part of the trial she demonstrated power in both her words and demeanor. Several examples of statements show traits of powerful speech--confrontiveness, forcefulness, and directness.

. "I wasn't looking for the Good Housekeeping Seal of Approval!"

. "I really don't like your [Bolen's] constantly saying he 'took' me. We went together."

. "He [Tarnower] most certainly did not pay [for Harris' son's education]!

. "My was not in love with anyone. He was fond of me then. He had been deeply in love [with me].

. "I always said I was fine and I always got through the day."

. " I didn't say I could see him. I wasn't given permission, Mr. Bolen . . . . I was asked to come."

These examples stressed Harris' directness and self-assurance. Some of Harris' responses to Bolen's questions were especially sharp and confrontive. At different points in the interrogation, Harris challenged the prosecutor in a way that showed she was maneuvering to gain verbal power. These excerpts illustrate the confrontive language:

. "May I give a complete answer to that, or do I have to say 'yes' or 'no'?

. "I told you three times in the last minute."

. "No, did he tell you, Mr. Bolen, I don't think it ever happened."

. "How long can you go on--forever?"

. "You don't really want to know the answer do you, Mr. Bolen? My answer is 'no'."

. "I would not state it that way. You know what I am thinking."

Harris' reprimands of the prosecutor were delivered in a sarcastic, and often resentful demeanor. Wadler (1981, February 4)commented about the cross-examination, saying "The last shred [of Harris' politeness is gone" (p. A1). Both the words of the trial record and the remarks of observers showed that Harris tried to ridicule the questioner, a quality associated with confrontive and powerful speech. These semantic choices contributed to the contradictions about the characterization of Harris that Aurnou had created during direct examination.

Effects of Semantic Choices

The semantic choices of attorneys and witnesses affect the outcome of the trial by affirming or denying the story of the case, construing meaning for jurors, enunciating the importance of witness preparation, and emphasizing the centrality of words to the meaning of courtroom proceedings.

First, the essay confirms the importance of words in affirming and denying the respective stories of the case. Litigators are managers of meaning. They not only need to choose their words but they also need to prepare witnesses to choose words carefully.

Tanford (1983) advises attorneys to use destructive cross-examination sparingly, to avoid trying to prove the witness is a liar, and to avoid interrogation after a witness has given a rambling and illogical direct examination. Following these rules or other rules for interrogation does not ensure a successful cross-examination. What does lead to a successful interrogation is the ability and skill of attorneys to use words so that they elicit testimony that presents an internally consistent story of the case.

In the Harris case, both Prosecutor Bolen and Defense Attorney Aurnou showed their competence in following the rules for cross-examination. Expert witnesses for both the prosecution and the defense gave credible responses supporting stories of the sides for which they presented testimony. In general the attorneys' skill and witnesses' credibility were evenly balanced. The main difference in the two sides appeared in Harris' own testimony. By her own admission she talked too much. This fact was verified in the trial record, which showed numerous instances when the judge had to admonish her to refrain from giving too much information or information that was not requested by the question. Additionally the story presented through the defendant's responses in direct examination contradicted the story that was extracted by opposing counsel on cross-examination. Aurnou attempted to manage meaning by presenting a semantically consistent story of the case, but Harris' testimony confused this meaning by her choices of form and content, "high" and "low language," and powerless and powerful speech.

This second effect of semantic choices is likely to be upon the perceptions of jurors. Prior to the verdict and after closing argument, Judge Leggett delivered a four-hour instruction to jurors. He reviewed the evidence from the 91 witnesses and gave guidance about which evidence should and should not be considered in deliberation. Leggett concluded his instruction saying: "The indictment reads Jean Harris . . . did with intent to cause death--that means her conscious intent to cause death. . . . The prosecution must prove beyond a reasonable doubt the defendant acted intentionally" (Wadler, 1981, February 18, p. A1). The jurors took eight days to reach the verdict. During their deliberations, jurors asked permission to have the court reporter re-read the testimony of Harris, suggesting that her testimony was indeed crucial to their verdict. The fact that the jurors deliberated for several days indicated that they had difficulty arriving at the decision, but eventually they conceded that the weight of the evidence rested with the prosecution, because they did not believe Harris' testimony.

The third effect emanated from the words of the trial testimony. Trial advocacy literature usually presents a set of rules that witnesses should follow: tell the truth, do not volunteer information, make sure you understand the question, and remain dignified at all times. While none of the rules is incorrect, neither is this advice sufficiently informative to guide witnesses to careful choices about words and demeanor.

Additional recommendations for witnesses should emphasize the importance of language in the courtroom including: inform the witness about the story of the case and recommend words and demeanor that are congruent with the story; tell witnesses that certain types of language are inconsistent and therefore should be avoided; maintain a consistent verbal portrait of oneself on direct and on

cross-examination; use similar names and attitudes to refer the the people and places that constitute the facts of the case; and warn witnesses to maintain a subordinate role rather than to try to upstage or overpower opposing counsel.

Finally, the use of language in the courtroom was complex and the jurors were likely to decide meaning--facts, motives, and credibility--according to their interpretations about the consistency and clarity of the verbal exchanges in the court. Court observers recognize that the facts of the case evolve in both the naming and attitudinizing, and they infer intentions from insincere demeanor and from logically contradictory statements. For these reasons, Jean Harris' testimony harmed the defense in several ways. First, the "high language" of a person of status and education was incongruent with the "low language" that showed her vengeance toward Tryforos. The sophisticated and cleverly drawn forms of discourse that served as evidence suggested that Harris was sharp intellectually and could use words creatively, but this evidence also pointed to her despair and anger. Harris' words on direct examination portrayed her as powerless and weak, whereas her words and demeanor on cross-examination showed her to be confrontive, directive, and powerful. Each of these factors created a storyteller who lacked credibility and a defense case that lacked consistency. If both Aurnou and Harris had paid more attention to their semantic choices, the verdict might have been different.

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